

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ALBERT L. GRAY, ADMINISTRATOR,)	
<u>ET AL.</u> ,)	
Plaintiff)	C.A. No. 04-312/L
)	
v.)	
)	
JEFFREY DERDERIAN, <u>ET AL.</u> ,)	
Defendant)	

**DEFENDANT MCLAUGHLIN & MORAN, INC.'S ANSWER
TO PLAINTIFFS' FIRST AMENDED MASTER COMPLAINT**

The defendant McLaughlin & Moran, Inc. ("McLaughlin & Moran")
responds to the allegations of plaintiffs' complaint as follows:

FIRST DEFENSE

1. Answering the allegations of the paragraph captioned
"Introduction," Defendant McLaughlin & Moran states that it is prefatory language for
which no response is required. To the extent that a response is required, McLaughlin &
Moran lacks knowledge or information sufficient to form a belief as to the truth of the
allegations contained in this paragraph.

2. Defendant McLaughlin & Moran lacks sufficient knowledge or
information to form a belief as to the truth of paragraphs 1-240 and 271.

3. Answering the allegations of paragraphs 272-279; 284-286; 291-
293; 298-299; 304-307; 312-315; 320-323; 328-331; 335-339; 344-347; 352-355; 360-
363; 368-371; 376-384; 395-402; 405-408; 411-425; 434-436; 441-444; 447-450; 453-
456; 459-464; 652-659; 666-675; 680-683; 688-691; Count I (¶¶ 280-81); Count II (¶¶
282-283); Count III (¶¶ 287-288) Count IV (¶¶ 289-290); Count V (¶¶ 294-295); Count

VI (§§ 296-297); Count VII (§§ 300-301); Count VIII (§§ 302-303); Count IX (§§ 308-309); Count X (§§ 310-311); Count XI (§§ 316-317); Count XII (§§ 318-319); Count XIII (§§ 324-325); Count XIV (§§ 326-327); Count XV (§§ 332-333); Count XVI (§§ 334); Count XVII (§§ 340-41); Count XVIII (§§ 342-343); Count XIX (§§ 348-349); Count XX (§§ 350-351); Count XXI (§§ 356-357); Count XXII (§§ 358-359); Count XXIII (§§ 364-365); Count XXIV (§§ 366-367); Count XXV (§§ 372-373); Count XXVI (§§ 374-375); Count XXVII (§§ 385-386); Count XXIX (§§ 403-404); Count XXX (§§ 409-410); Count XXXI (§§ 426-427); Count XXXII (§§ 428-429); Count XXXIII (§§ 430-431); Count XXXIV (§§ 432-433); Count XXXV (§§ 437-438); Count XXXVI (§§ 439-440); Count XXXVII (§§ 445-446); Count XXXVIII (§§ 451-452); Count XXXIX (§§ 457-458); Count XL (§§ 465-466); Count XLI (§§ 467-468); Count XLII (§§ 469-472); Count XLIII (§§ 473-477); Count XLIV (§§ 478-480); Count XLV (§§ 481-484); Count XLVI (§§ 485-489); Count XLVII (§§ 490-492); Count XLVIII (§§ 493-498); Count XLIX (§§ 499-503); Count L (§§ 504-506); Count LI (§§ 507-511); Count LII (§§ 512-532); Count LIII (§§ 533-535); Count LIV (§§ 536-539); Count LX (§§ 540-560); Count LVI (§§ 561-563); Count LVII (§§ 564-567); Count LVIII (§§ 568-588); Count LIX (§§ 589-591); Count LX (§§ 592-596); Count LXI (§§ 597-617); Count LXII (§§ 618-620); Count LXIII (§§ 621-622); Count LXIV (§§ 623-625); Count LXV (§§ 626-628); Count LXVI (§§ 629-631); Count LXVII (§§ 632-634); Count LXVIII (§§ 635-643); and Count LXIX (§§ 644-648); Count LXX (§§ 649-651); Count LXXI (§§ 660-661); Count LXXII (§§ 662-663); Count LXXIII (§§ 664-665); Count LXXIV (§§ 676-677); Count LXXV (§§ 678-679); Count LXXVI (§§ 684-685); Count LXXVII (§§ 686-687); Count LXXVIII (§§ 692-693); Count LXXIX (§§ 694-695); Count LXXX (§§ 696-701); Count LXXXI (§§ 702-706),

avers that these paragraphs refer to defendants other than McLaughlin & Moran for which no answer or response is required of this defendant. To the extent an answer is required, McLaughlin & Moran lacks knowledge or information sufficient to form a belief as to the truth of the allegations of those paragraphs. To the extent any of these paragraphs incorporate other paragraphs to which McLaughlin & Moran has separately or specifically replied, McLaughlin & Moran incorporates its responses to those paragraphs herein.

4. Answering the allegations of paragraph 387, Defendant McLaughlin & Moran admits it is a Rhode Island corporation with a principal place of business in Cranston, County of Providence, Rhode Island and at all relevant times McLaughlin & Moran was the wholesaler for Anheuser-Busch products in Rhode Island, avers that the remaining allegations of this paragraph are legal conclusions for which no response is required and states further that if an answer is deemed required, McLaughlin & Moran denies the remaining allegations of this paragraph.

5. Answering the allegations of paragraph 388, McLaughlin & Moran admits that it advertised and conducted a beer promotion concurrently with The Station's presentation of Great White on February 20, 2003 and denies any and all remaining allegations of this paragraph.

6. Defendant McLaughlin & Moran denies the allegations of paragraphs 389-392.

7. Answering the allegations of paragraph 393, Defendant McLaughlin & Moran repeats and realleges its responses to paragraphs 1 through 392 as if set forth fully herein.

8. Answering the allegations of paragraph 394, Defendant McLaughlin & Moran states that it sets forth conclusions of law for which no response is required. To the extent that a response is required, defendant McLaughlin & Moran denies the allegations of this paragraph.

SECOND DEFENSE

Plaintiffs have failed to state a claim upon which relief may be granted against defendant McLaughlin & Moran.

THIRD DEFENSE

Defendant McLaughlin & Moran owed no legal duty to the Plaintiffs.

FOURTH DEFENSE

Plaintiffs' purported injuries were directly and/or proximately caused in whole or in part by the negligent, criminal or otherwise improper conduct of other third parties over whom McLaughlin & Moran exercised no control and for whom McLaughlin & Moran is not legally responsible.

FIFTH DEFENSE

If McLaughlin & Moran is found liable to Plaintiffs, then it is entitled to a set-off for all settlements/benefits received by Plaintiffs.

SIXTH DEFENSE

The injuries or damages purportedly sustained by Plaintiffs are the result of intervening and/or supervening acts of a person or entity over whom McLaughlin & Moran exercised no control and for whom McLaughlin & Moran is not legally responsible.

SEVENTH DEFENSE

Under the laws applicable to this case and to the extent claimed by Plaintiffs, no

punitive damages can be recovered by Plaintiffs as punitive damages are appropriate only when there is proof that the acts complained of were done with malice and bad faith, and with the intent to cause harm.

EIGHTH DEFENSE

To the extent that Plaintiffs seek to impose punitive damages, any such claim for punitive damages would be unconstitutional under the United States Constitution and applicable provisions of the Rhode Island State Constitution and unlawful under applicable State statutes to the extent that, among other things: (1) McLaughlin & Moran's liability for punitive damages and the appropriate amount of punitive damages are not required to be established by clear and convincing evidence; (2) punitive damages are sought to be awarded without bifurcating the trial of all punitive damages issues; (3) any award of punitive damages is sought with no predetermined limit, such as maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that the court or a jury may impose; (4) any award of punitive damages is based on anything other than McLaughlin & Moran's alleged conduct in connection with the transaction at issue in this lawsuit; or (5) an award of punitive damages is sought for the purpose of compensating Plaintiffs for elements of damages not otherwise recognizable by applicable state law.

NINTH DEFENSE

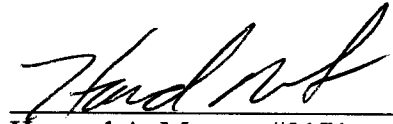
To the extent Plaintiffs seek to impose punitive or exemplary damages, Plaintiffs' claims for punitive or exemplary damages are barred or reduced by applicable law or statute or, in the alternative, are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United states Constitution, the Full Faith

Credit Clause of the United States Constitution, and applicable provisions of the Constitution of the State of Rhode Island. Any law, statute or other authority purporting to permit the recovery of punitive damages in this case is unconstitutional, facially and as applied, to the extent that, without limitation, it: (1) lacks constitutionally sufficient standards to guide the discretion used in determining whether to award punitive damages; (2) is void for vagueness in that it fails to provide adequate advance notice as to what conduct will result in punitive damages; (3) unconstitutionally may permit recovery of punitive damages in any amount that is not both reasonable and proportionate to the amount of harm, if any to Plaintiffs and to the amount of compensatory damages, if any; (4) unconstitutionally may permit consideration of net worth or other financial information; (5) does not expressly prohibit awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of individually discriminatory characteristics, including the corporate status of McLaughlin & Moran; (6) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any punitive damages award; (7) lacks constitutionally sufficient standards for appellate review of any punitive damages award; and (8) otherwise fails to satisfy Supreme Court precedent.

WHEREFORE, the defendant McLaughlin & Moran, Inc. respectfully requests that:

A. the Plaintiffs Complaint be dismissed with prejudice as to it;

- B. Plaintiffs' demands for relief against it be denied in every respect;
and
- C. the Court grant such other and further relief as may be just, proper
and equitable.



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Dated: February , 2005

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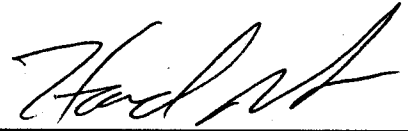
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I hereby certify that I served on the above-named counsel of record a copy of the within Answer of Defendant McLaughlin & Moran, Inc. by electronic mail and on Stephen Born, Esq. and Joseph F. Krowski, Esq. by first-class mail postage prepaid on the 4th day of February, 2005.

A handwritten signature in cursive script, appearing to read "Henderson", is written over a horizontal line.